



DEPARTMENT OF DEFENSE

AUDIT REPORT

DEFENSE ENVIRONMENTAL
RESTORATION PROGRAM

No. 91-069

April 2, 1991

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DEPARTMENT OF DEFENSE
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ARLINGTON, VIRGINIA 22202-2884

April 2, 1991

MEMORANDUM FOR ASSISTANT SECRETARY OF DEFENSE (PRODUCTION AND LOGISTICS)
DEPUTY ASSISTANT SECRETARY OF DEFENSE (ENVIRONMENT)
ASSISTANT SECRETARY OF THE ARMY (FINANCIAL MANAGEMENT)
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)

SUBJECT: Report on the Audit of the Defense Environmental Restoration Program (Report No. 91-069)

This is our final report on the Audit of the Defense Environmental Restoration Program (DERP). The audit was requested by the Assistant Secretary of Defense (Production and Logistics) and was made from November 1988 through June 1990. The objectives of the audit were to evaluate DERP funding to determine whether funds were used in accordance with DoD guidance, whether adequate controls existed over obligations and expenditures, and whether adequate controls were in place to track funding history. From FY 1984 through FY 1989, the DERP received \$2.1 billion for the 8,200 sites identified within DoD. For FY 1989, the DERP received \$500 million.

The audit showed that obligations and expenditures were generally made in accordance with DoD accounting guidance. Improvements were needed, however, to strengthen policy, controls, and oversight for the use of DERP funds. Controls were inadequate to track funding history because data were inaccurate and did not include information from the U.S. Army Corps of Engineers on formerly used Defense sites (former sites). These areas are summarized in the following paragraphs, and the details, together with the recommendations, are shown in Part II of this report.

DoD Components used funds for litigation, landscaping, construction and renovation projects, and other activities not authorized under applicable guidance or Deputy Assistant Secretary of Defense (Environment) (DASD[E]) funding allocations. As a result, approximately \$83.9 million was used from FY 1986 through FY 1989 for activities that were questionable or not eligible for environmental restoration funds. We recommended that the DASD(E), Office of the Assistant

Secretary of Defense (Production and Logistics) (ASD [P&L]) make policies and guidance more specific and require that Components request approval for those activities not addressed by DASD(E) guidance or approved Component procedures (page 5).

Funding history could not be tracked in the DoD data base established for the environmental restoration program. The data base excluded U.S. Army Corps of Engineers data on projects costing \$140 million, and contained inaccurate information on project/site funding. As much as \$560,000 that could have been returned to the restoration account would probably be lost to merged accounts or other accounts. We recommended that the DASD(E) include former sites controlled by the U.S. Army Corps of Engineers in the data base, define the term "site," and require the Components to report costs by site; reconcile actual costs, including adjustments made after the close of a fiscal year, with amounts in the data base; and institute controls to ensure that DERP funds remain available for environmental restoration purposes (page 9).

The audit identified internal control deficiencies as defined by Public Law 97-255, Office of Management and Budget Circular A-123, and DoD Directive 5010.38. Controls over fund usage were inadequate. Recommendations A.1. and A.2. in this report, if implemented, will correct these deficiencies. Controls over accuracy of the data base and controls necessary to ensure that expired DERP funds remain available for use were inadequate. Recommendations B.1. through B.4. of this report, if implemented, will correct these deficiencies. Senior officials responsible for internal controls within your Department will be provided copies of the final report.

This report makes no claims of potential monetary benefits. Appendix D summarizes the potential nonmonetary benefits.

We provided a draft of this report to the addressees on September 21, 1990, and requested comments by November 20, 1990. We received comments to the draft report from the ASD (P&L) on January 25, 1991. These comments included responses from the Army, the Navy, the Air Force, and the Defense Logistics Agency (see Appendix E).

We did not change the final report based on comments on specific projects shown in Appendix B (Questionable and Ineligible Projects). We had discussed each questioned project with the DASD(E) and had subsequent meetings with representatives of the Components and the Office of the Secretary of Defense. The differences of opinion as to whether the questioned projects were eligible emphasized the need for clear guidance and resolution by a central organization for projects not covered in the guidance.

The ASD (P&L) concurred with the findings and all recommendations except for Recommendation A.2. He partially concurred with Recommendation A.2., and proposed an alternative that is not the most desirable but could work if a mechanism is established to keep the DASD(E) informed. The DASD(E) would need to retain authorization to overrule Components' decisions and to inform other Components of his decisions. We request that the ASD (P&L) reconsider our recommendation or modify the proposed alternative to include an active DASD(E) role in monitoring decisions and disseminating information to the Components. The Assistant Secretary also is requested to give estimated completion dates for corrective actions on Recommendations A.2. and B.4.

DoD Directive 7650.3 requires prompt resolution of audit issues. Accordingly, the ASD (P&L) should comment on the unresolved issues within 60 days of the date of this report.

The courtesies and cooperation extended to the audit staff are appreciated. If you have any questions about this audit, please contact Mr. Raymond D. Kidd, Program Director, at (703) 614-1682 (DSN 224-1682), or Mr. John Pors, Acting Project Manager, at (703) 693-0479 (DSN 223-0479). Appendix G lists the audit team members. Copies of this report are being provided to the activities listed in Appendix H.



Robert J. Lieberman
Assistant Inspector General
for Auditing

cc:
Secretary of the Army
Secretary of the Navy
Secretary of the Air Force

REPORT ON THE AUDIT OF THE DEFENSE
ENVIRONMENTAL RESTORATION PROGRAM

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REPORT ON THE AUDIT OF THE DEFENSE
ENVIRONMENTAL RESTORATION PROGRAM

PART I - INTRODUCTION

Background

The Defense Environmental Restoration Program (DERP) was established by Public Law 99-499, Section 211, to fund the activities of the Secretary of Defense relating to environmental restoration. The Secretary of Defense is responsible for cleaning up hazardous substances at facilities owned, leased, or possessed by DoD; at facilities that were under DoD jurisdiction when hazardous substances were released; and on vessels owned or operated by DoD. DERP is managed centrally by the Office of the Secretary of Defense. The Deputy Assistant Secretary of Defense (Environment) (DASD[E]), Office of the Assistant Secretary of Defense (Production & Logistics) (ASD[P&L]) provides overall policy direction and guidance for DERP and maintains a data base for control and tracking of funds. DoD Components (the Military Departments and the Defense Logistics Agency) are responsible for implementing the guidance at installations.

DERP's purpose is to identify, investigate, and clean up contamination from hazardous substances on installations and formerly used properties; to fund studies and purchase equipment to minimize the generation of hazardous wastes; to demolish and remove unsafe buildings and debris from currently and formerly used properties; and to safely dispose of an installation's hazardous wastes emanating from a remedial action cleanup. The DASD(E) provided annual guidance on specific activities that were eligible or ineligible for DERP funding (Appendix A). To accomplish these cleanup functions, DoD has received over \$2.1 billion since FY 1984, including \$500 million for FY 1989.

Objectives and Scope

The objectives of the audit were to evaluate DERP funding to determine whether funds were used in accordance with DoD guidance, whether adequate controls existed over obligations and expenditures, and whether controls were in place to track funding history.

The audit showed that obligations and expenditures were generally made in accordance with DoD accounting policies. Accounting controls over obligations and expenditures were generally adequate, and documentation was generally available to support obligations and expenditures. However, weaknesses existed in limiting the use of DERP funds to eligible activities, in control

procedures to ensure that DERP funds were not lost to the program, and in the accuracy of the data base for tracking funding histories.

We statistically sampled activities so that we could project the audit results. We reviewed project files, solicitation documents, contracts, payment records, invoices, and vouchers for FY's 1986 through 1989 at the activities listed in Appendix F. We reviewed correspondence and approval documents that supported the contracts, and obligations and expenditures that supported the use of DERP funds. We also reviewed amounts appropriated for DERP to determine how they were budgeted and distributed. Budgeted and actual financial data obtained from the sites were compared to information in the DASD(E) data base for FY's 1986 through 1988.

Although we performed survey work at the Defense Logistics Agency (DLA), we did not perform any detailed audit work because of the relatively small proportion of DERP funds that DLA received in any given year. For example, in FY 1989, DLA received about \$11.7 million of the \$500 million available in DERP funds.

This program audit was made between November 1988 and June 1990 in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD, and accordingly included the necessary tests of the internal controls and verification of the data base.

Internal Controls

The audit identified internal control deficiencies as defined by Public Law 97-255, Office of Management and Budget Circular A-123, and DoD Directive 5010.38. Controls over fund usage were inadequate. Recommendations A.1. and A.2. in this report, if implemented, will correct these deficiencies. Controls over accuracy of the data base and controls necessary to ensure that expired DERP funds remain available for use were inadequate. Recommendations B.1. through B.4. of this report, if implemented, will correct these deficiencies.

Sampling Methodology

We obtained the DASD(E) DERP universe data for FY's 1986 through 1989 from DASD(E)'s contractor for data base support, and stratified the universe by dollar value of activities within each Component. We then drew a statistical sample for 30 locations and reviewed the DERP projects at those locations to determine whether DERP funds were used in accordance with regulations and guidelines (see Appendix C).

Prior Coverage

The Office of the Assistant Inspector General for Auditing issued Audit Report No. 90-015, "Quick-Reaction Report on the Audit of the Defense Environmental Restoration Program," December 13, 1989. The U.S. Army Toxic and Hazardous Materials Agency was using DERP funds for building renovations that were not eligible for funding under DASD(E) guidance. The report recommended that the funds be decommitted for the projects in question. Although the Army disagreed with the finding, the recommendation was implemented by using Operations and Maintenance funds for one project and canceling the requirement for the second project.

The Air Force Audit Agency issued Report No. 8255310, "Financial Management of the Defense Environmental Restoration Account (DERA)," April 24, 1989. The auditors identified inadequacies in controls over financial transactions, the accuracy of financial data, and the interface procedures for financial data. The auditors recommended that procedures be established to verify expenditures, that a separate code be developed for reporting DERP transactions, that a procedure be developed to reconcile financial data from the civil engineers and the comptroller, and that procedures be established to allocate and report the use of DERP funds through the civil engineering division. The Air Force management agreed and took appropriate corrective actions.

The Office of the Assistant Inspector General for Inspections issued Inspection Report No. 90-INS-14, "Defense Environmental Restoration Program," on July 18, 1990. The report identified inadequacies in the program's guidance, funding procedures, exchange of information between Components, and consistency of program implementation.

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PART II - FINDINGS AND RECOMMENDATIONS

A. Use of Defense Environmental Restoration Program Funds

FINDING

The Military Departments used Defense Environmental Restoration Program (DERP) funds for litigation, landscaping projects, construction and renovation projects, and other activities that were either questionable or not authorized under DoD guidance. Funds were used for questionable and ineligible projects primarily because guidance was not specific, changes to the guidance were not timely, and activities were not complying with guidance. As a result, approximately \$83.9 million was used between FY 1986 and FY 1989 for activities that should have been funded from other sources.

DISCUSSION OF DETAILS

Background. The Defense Environmental Restoration Account (DERA) was established by Public Law 99-499 (H.R. 2005), the Superfund Amendments and Reauthorization Act of 1986, October 1986. DERA is a no-year transfer account established at the Secretary of Defense level through which DoD Components receive funds for DERP projects. Upon transfer to a Component's account, the funds assume the characteristics of the appropriation to which they are transferred. For example, funds transferred to a Component's Operations and Maintenance account assume the characteristics of funds appropriated for that account, such as a 1-year expiration.

The DERP allows each Component to accomplish the objectives of DERP in the way that best suits its organizational structure. The Army has established a central program manager, the U.S. Army Toxic and Hazardous Materials Agency (USATHAMA), for all projects except for the Rocky Mountain Arsenal project, which has a separate manager because of its size. The Navy manages DERP through the Naval Facilities Engineering Command, which has delegated operational control to its divisions. The Air Force has delegated operational control of projects to its major commands. In addition, DERP has been divided into currently active DoD sites and former sites. Cleanup operations at former sites are managed by the U.S. Army Corps of Engineers. The Deputy Assistant Secretary of Defense (Environment) (DASD[E]) issues annual guidance (Appendix A) that Components use to determine whether projects are eligible for the DERP. Although eligible, projects may not be funded in a given year. For instance, no funds have been allocated by DASD(E) for building demolition and debris removal (BDDR) in the active sites portion of DERP since FY 1986 and in the former sites portion since FY 1987. Therefore, although BDDR is an eligible DERP activity, it has not been fundable since the fiscal years stated above.

Use of Funds. DERP funds were used for questionable and ineligible projects. Using the applicable fiscal year guidance, we reviewed projects in which DERP funds totaling \$294.8 million were used at 74 locations (30 sample locations and 44 other locations, most of which were not in the data base) from FY's 1986 through 1989. We found that approximately \$22.8 million (7.7 percent) was used at 16 locations (21.6 percent) for ineligible or questionable activities (see Appendix B). Funds were used for ineligible and questionable activities because Components did not receive adequate or timely guidance from DASD(E) or did not comply with guidance that had been provided.

Guidance was inadequate because it did not address eligibility issues that DASD(E) was concerned about, and did not define the terms used to determine eligibility. For example, DASD(E) guidance did not state whether litigation costs were eligible for DERP funds. As a result, one Component considered all costs incurred for litigation of DERP issues as eligible for funding because DASD(E) did not list litigation costs as an ineligible activity. DASD(E) personnel explained that DERP funds were eligible for litigation costs of a technical nature, but not for general litigation costs. We therefore questioned \$1.1 million in general litigation support that DASD(E) did not consider fundable by DERP. DASD(E) did not clearly define management expenses; instead, the example given was, "Management expenses associated with the Installation Restoration Program, including civilian salaries and training." As a result, interpretation of what constituted management expenses was left to each Component. DERP funds were then used for items DASD(E) considered ineligible, such as building renovations, which exceeded \$100,000 at one location.

The annual guidance from DASD(E) was untimely. From FY 1987 through FY 1989, the earliest guidance was issued in mid-November. Components and their subordinate activities had to operate for at least 6 weeks using outdated guidance. In at least one instance, this may have contributed to the funding of a \$1.6 million project for which DERP funds were not authorized during that fiscal year. In response to this problem, DASD(E) issued 2-year guidance for FY's 1990 and 1991 on September 29, 1989.

Components did not always comply with DASD(E) guidance. For example, although DASD(E) guidance listed construction of storage facilities for hazardous materials as ineligible, we found that \$141,000 in DERP funds had been used to construct storage areas at one location.

We found that approximately \$22.8 million was used for questionable or ineligible projects. Based on the results of our

sample, we estimated that a total of \$83.9 million out of a universe of \$1.36 billion was used for questionable or ineligible projects between FY's 1986 and 1989 (see Appendix C).

MANAGEMENT COMMENTS ON THE FINDING

The DoD Components sent comments on the draft report to the DASD(E). The Navy and the Air Force took exception to individual projects listed in Appendix B. Their comments are attachments to Appendix E. As pointed out by the Assistant Secretary of Defense (Production and Logistics) (ASD[P&L]), although various meetings were held with personnel from DASD(E), the DoD Comptroller's office, DoD Components, and the auditors, attendees could not agree on whether DERP funds were eligible for use in a number of the cases we cited.

AUDIT RESPONSE

Despite our various meetings, Components did not furnish sufficient documentation for the cases listed in Appendix B to clearly demonstrate that the funds were used properly. For each case that we questioned, we held lengthy discussions with personnel from the Office of the DASD(E) to ensure that we did not misinterpret the intent of the law or DoD's implementation. The Components' disagreements on these cases emphasized the need for improved guidance and a strong oversight role. We did not remove any of the examples. We believe that the DASD(E) should determine whether projects are eligible. The DASD(E) is taking actions to ensure that guidance is strengthened and that a procedure for effective distribution of the guidance is being developed, and we find these actions encouraging.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Deputy Assistant Secretary of Defense (Environment):

1. Provide specific and timely policies and guidance defining activities that are eligible or ineligible for Defense Environmental Restoration Program funding, including definitions of terminology.
2. Approve projects in areas not specifically addressed by the Defense Environmental Restoration Program guidance and where eligibility cannot be determined at the Component level using methodology approved by the Deputy Assistant Secretary of Defense (Environment).

MANAGEMENT COMMENTS

The ASD(P&L) concurred with Recommendation A.1. Personnel in his office are developing a DoD directive and preparing a program manual, which they expect to complete during the fourth quarter of FY 1991. They will also distribute to all Components copies of specific decisions and justifications for acceptance or rejection of projects not covered by the directive and manual.

The ASD(P&L) partially concurred with Recommendation A.2. and stated that each DoD Component's Executive Program Manager should be authorized to provide written approval for projects not specifically addressed by the directive or the program manual being developed. The Executive Program Manager could defer decisions to the DASD(E).

AUDIT RESPONSE

Management's comments to Recommendation A.1. are considered fully responsive. The ASD(P&L) is initiating actions that, when implemented, should satisfy the intent of the recommendation.

Management's comments to Recommendation A.2. are not fully responsive. Management's proposal is much the same as the current process, which resulted in the use of environmental funds for the questionable and ineligible projects listed in Appendix B. If more than one organization can determine the eligibility of nonspecified projects, the consistent application of the law to DERP could be jeopardized. If the Executive Program Managers at all four DoD Components and the DASD(E) can independently determine eligibility, continued funding of questionable activities and projects could result. We believe that the Components should have flexibility in carrying out the program, but only in cleanup and organization, not in determining the eligibility of a project.

Since our main concern is to ensure that only eligible projects receive environmental funding, we continue to believe that the DASD(E) should make decisions on nonspecified projects. However, the alternative proposed by the ASD(P&L) could work if the Component's Executive Program Manager notifies the DASD(E) in writing of each decision on a nonspecified project. The DASD(E) should be advised in writing so that he can concur in or overrule the decision and can disseminate it to other Components. This would help clarify the eligibility or ineligibility of similar projects.

The ASD(P&L) needs to provide revised comments on the recommendation or its alternative and give estimated dates for completion of corrective actions.

B. Control of Environmental Restoration Funds

FINDING

Funding histories of installation restoration projects could not be tracked in the DoD data base established for that purpose. All costs were not included in the data base; budgeted costs were not always reconciled with actual costs and were not updated for adjustments made after the close of a fiscal year; and costs were prorated without basis. Additionally, expired DERP funds were not controlled to ensure that they would be used only for environmental restoration purposes. Funding histories could not be tracked because procedures and controls were not established to ensure that accurate and complete cost information was entered into the data base for each site. Accounting practices did not distinguish expired DERP funds from other expired funds in the accounts to which they were transferred. As a result, the data base excluded restoration projects of approximately \$140 million, actual costs of specific projects could not be identified, and \$560,000 in expired funds could be lost to the program.

DISCUSSION OF DETAILS

Background. The Defense Environmental Restoration Program Management Information System is a centralized data base established to give DASD(E) a single source of information for the management of DERP. A contractor maintained the data base, using information provided by the DoD Components and the DASD(E).

DASD(E) furnished the data base contractor with budget information at the beginning of each fiscal year. The contractor input this information into the data base, establishing that fiscal year's financial universe. At the end of the fiscal year, the Components provided the contractor with their final obligated amounts under that year's budget. The contractor used the Components' submissions to update the data base and finalize the financial data for that fiscal year. The data were used for management information and preparation of the annual report to Congress on DERP's performance.

Total Data Base Evaluation. We verified the accuracy of the FY 1988 portion of the data base and determined that the information was erroneous because of omissions, inaccuracies, and inconsistencies in reporting. There were differences in 108 records, amounting to \$10.6 million, between DASD(E)'s data base and the Components' data. In addition, the data base did not contain information on the formerly used Defense sites (former sites) managed by the U.S. Army Corps of Engineers (the Corps) because the Corps had not been required to provide

information to the system. As a result, the data base did not provide reliable data for tracking the funding history or managing or reporting on DERP.

Definition of "Site." Although Congress intended that data would be provided by site, "site" was not defined. Because Components were left to interpret the term "site," information reported by site differed accordingly. The term was used to describe an entire installation; a collection area on an installation, such as a dump site; and individual spots, such as a single well. As a result, the data base contractor had arbitrarily prorated funding to sites listed in the data base, which added to the inaccuracies. For example, the Navy's data for FY 1988 listed one Remedial Investigation/Feasibility Study for \$150,000 at the Marine Corps Base, Quantico, Virginia, but the contractor recorded the study as having been accomplished at seven Quantico sites for \$21,400 each.

Data Base Differences. Information in the data base was inaccurate, which reduced its value as a management tool and reporting mechanism. The sum of all differences between the DASD(E) data base and the Components' data for FY 1988 was:

- Army: \$5.0 million for 21 activities
- Navy: \$4.7 million for 69 activities
- Air Force: \$0.9 million for 18 activities

This occurred because procedures and controls were not established to perform reconciliations or make adjustments to DASD(E)'s data base after the fiscal year's end. For example, the contractor's FY 1988 data base listed the Army's Lake City Army Ammunition Plant project at \$11.1 million, while the Army's project file showed \$11.7 million. A reconciliation with Army accounting records disclosed that five transactions totaling \$.6 million were processed after the fiscal year ended (the cutoff date for reporting) but were not reported to the DASD(E)'s data base contractor.

U.S. Army Corps of Engineers. The Corps maintained its own data base for former sites and submitted summary data for DASD(E)'s annual report to Congress. However, detailed data had not been reported or entered into DASD(E)'s data base. As a result, \$140 million in DERP projects was excluded from the data base, which reduced DASD(E)'s ability to track and monitor funds allocated to former sites as compared to the active sites.

Controlling Funds. Expired DERP funds that were or will be deobligated were not separately controlled to ensure that they were used only for environmental restoration purposes.

On a Military Interdepartmental Purchase Request (MIPR) from the Air National Guard to the Defense Logistics Agency (DLA), \$550,000 remained outstanding, although the work was complete and all bills had been processed. DLA's contract representative stated that the contractor had not established final indirect cost rates in order to close out the contract to which the MIPR was assigned. However, only a small percentage of the \$550,000 should have been needed for additional indirect costs over the established billing rate; the balance should have been returned to the Air National Guard. Because the obligation period had expired, deobligation of the funds would be likely to combine the DERP funds with other expired funds within the Component's accounting system. In addition to the example above, the U.S. Army Corps of Engineers used about \$10,000 in expired DERP funds to pay for cost growth caused by foreign currency fluctuation in the Operations and Maintenance (O&M) account. DERP funds, which had assumed the characteristics of an O&M appropriation upon their transfer to that account, lost their distinct characteristics when the project ended and the remaining funds were transferred to the O&M expired year account.

The loss of DERP's distinct characteristics could lead to the use of DERP funds for other than environmental purposes, contrary to the intent of the legislation. We were unable to project to what extent this may have occurred.

RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Deputy Assistant Secretary of Defense (Environment):

1. Establish a uniform definition for the term "site" in coordination with the Environmental Protection Agency or define "site" for DoD accounting purposes, and establish policy for DoD Components to report costs by site.

2. Include the formerly used Defense sites controlled by the U.S. Army Corps of Engineers in the Defense Environmental Restoration Program Management Information System.

3. Establish procedures to reconcile and adjust amounts entered into the Defense Environmental Restoration Program Management Information System with actual obligations and expenditures.

4. Institute procedures and controls to ensure that funds from the Defense Environmental Restoration Program are used only for environmental restoration purposes and are not lost to further use by the Program. This should be coordinated with the Comptroller of the Department of Defense and the General Counsel of the Department of Defense to establish accounting procedures and practices necessary to control funds.

MANAGEMENT COMMENTS

The ASD(P&L) concurred with the finding and recommendations. Personnel in his office have developed and implemented site name conventions for Components and included them in their Defense Environmental Restoration Program Management Information System Users' Manual, issued in November 1990 (Recommendation B.1.). Formerly used Defense sites have now been added to the management information system (Recommendation B.2.). The Automated Defense Environmental Restoration Budget System is being enhanced to include the capability for tracking amounts budgeted, funded, obligated, and expended. The expected completion date is September 1991 (Recommendation B.3.). A standardized structure is being developed so that all environmental costs can be tracked by program element and cost account. Additionally, the DASD(E) has established a quarterly review process to prevent loss of environmental restoration funds through expiration (Recommendation B.4.)

The comments are considered fully responsive. However, the ASD(P&L) needs to provide an estimated completion date for corrective actions on Recommendation B.4.

**ACTIVITIES ELIGIBLE AND INELIGIBLE FOR DEFENSE
ENVIRONMENTAL RESTORATION PROGRAM (DERP) FUNDING**

(Excerpted from DASD[E] Management Guidance for FY 1989)

Activities Eligible for DERP Funding

Installation Restoration Program

- Investigations to identify, confirm, and quantify contamination, feasibility studies, remedial action plans and designs, and remedial or removal actions.
- Research, development, and technology demonstrations necessary to conduct cleanups.
- Expenses associated with cooperative multiparty cleanup plans and activities.
- Remedial actions to protect or restore natural resources damaged by contamination from past hazardous waste disposal activities.
- Cleanup of low-level radioactive waste sites that have been identified as IRP (Installation Restoration Program) sites.
- Management expenses associated with the Installation Restoration Program, including civilian salaries and training.
- Capital costs of long-term monitoring systems.
- Operating expenses for the first 2 years of long-term monitoring systems.
- Immediate actions necessary to address health and safety concerns such as providing alternative water supplies or treatment of contaminated drinking water, when the hazard results from a release from DoD property.
- Studies to locate underground tanks not used since January 1984 and activities to determine actual or potential contamination.
- Cleanup of contamination believed to be harming human health and the environment resulting from tanks not used since January 1984, unless such cleanup is incidental to tank replacement.
- Cleanup of contamination believed to be harming human health and the environment resulting from tank leaks that occurred prior to March 1, 1986, unless the cleanup is incidental to tank replacement. Components must have evidence that tanks were leaking prior to March 1, 1986. NOTE: Beginning in

**ACTIVITIES ELIGIBLE AND INELIGIBLE FOR DEFENSE
ENVIRONMENTAL RESTORATION PROGRAM (DERP) FUNDING**
(Continued)

FY 92, Components should program cleanups for currently operating tanks in other appropriations.

- CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) assessments necessary prior to excess of real property assets.
- Response actions at solid waste management units that would meet the definition of a past disposal site under CERCLA/SARA (Superfund Amendments and Reauthorization Act).
- Studies and support for RD&D (research, development, and demonstration) of innovative and cost-effective technologies for cleanup of hazardous waste sites.
- Third-party sites where DoD is in receipt of a Potentially Responsible Party (PRP) letter.

Building Demolition and Debris Removal

- The demolition of buildings or the removal of debris that constitute a safety hazard on lands formerly used by the Department of Defense, provided such lands were transferred to state or local governments or native corporations.
- The demolition of buildings or the removal of debris that constitute a safety hazard on active installations.
- Expenses incidental to complete restoration, such as restoration of natural resources, are included if such expenses are clearly and directly related to the demolition and debris removal.

Other Hazardous Waste Operations

- Procurement of equipment and conduct of studies to reduce hazardous waste generation that have broad Component-wide applicability or substantially reduce wastes within a Component.
- Data collection in support of waste minimization.
- Research, development, studies, and technology demonstrations related to hazardous waste management, treatment, or disposal needs.
- Studies and support for toxicological data collection and methodology on risk of exposure to hazardous wastes.

**ACTIVITIES ELIGIBLE AND INELIGIBLE FOR DEFENSE
ENVIRONMENTAL RESTORATION PROGRAM (DERP) FUNDING**
(Continued)

- Studies and support for commonly found unregulated hazardous substances by the Department of Health and Human Services (Agency for Toxic Substances and Disease Registry) and for DoD Health Advisories by the EPA.

Activities Not Eligible for DERP Funding

- Closing or capping sanitary landfills unrelated to a hazardous waste cleanup action.
- RCRA (Resource Conservation and Recovery Act) closures that are associated with current waste generation or do not meet the definition of a response action under CERCLA/SARA.
- Construction of hazardous waste storage, transfer, treatment, or disposal facilities.
- Demolition or debris removal as part of a new construction project.
- Testing or repair of active underground tanks.
- Costs of replacing leaking underground tanks.
- Cleanup of contamination believed to be harming health and the environment resulting from underground tanks in use after January 1984, unless there is evidence that contamination occurred prior to March 1, 1986.
- Costs of replacing PCB transformers.
- Costs of recurring service contracts for waste reduction/minimization.
- Costs of spill prevention and containment measures for currently operating equipment and facilities.
- Cleanup costs of spills covered or required to be covered by spill prevention, containment, and countermeasures (SPCC) plans.
- Costs of maintenance or repair to existing treatment, storage, or disposal facilities.
- Costs of hazardous waste disposal operations, including associated management and operational costs.
- Overseas IRP activities not subject to U.S. law.

NOTE: Guidance for other fiscal years may differ and should be consulted for specific activities.

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QUESTIONABLE AND INELIGIBLE PROJECTS

<u>Army Projects</u>				<u>Basis for Questioned and Ineligible Costs</u>	
<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>
Aberdeen	MIPR6989	89	\$	684	Inspection hours for Job Order 1208: To construct a covered oil storage facility.
Aberdeen	488TR1820648KO MIPR1019	88 89		100,834 12,603	Program for minimization of hazardous waste: Auxiliary storage area under various work orders.
Aberdeen	488TR2150149KO	88		27,359	Provides all labor, materials, and equipment necessary to construct a drum storage area near Building 7408.
Aberdeen	MIPR5289	89	\$	1,665	Additional labor and materials for roll-up door for Building E-5179.
Aberdeen	488T00500748KO	88		15,623	Repair and improvements to Building E-5179; new roll-up door.
Aberdeen	487T00950348KO	87		5,187	Repair and improvements to Building E-5179.

Building renovations were not authorized in DASD(E) guidance, and were therefore considered ineligible for funding. This construction/renovation project was not for U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) office space as other projects were, and was therefore considered and treated separately from the "management expenses" projects.

QUESTIONABLE AND INELIGIBLE PROJECTS (Continued)

<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>	<u>Basis for Questioned and Ineligible Costs</u>
Aberdeen	MIPR8089	89		\$544	Minor renovations to restroom in Building E-4460.	The Army considered these building renovation projects "management expenses" because barracks were converted into office space to house USATHAMA personnel. This was contrary to the intent of the legislation and DASD(E) guidance. DASD(E) concurred with our opinion and has stopped other renovations, prior to obligation of DERP funds.
Aberdeen	MIPR1709	89	\$ 2,906		Install partition and double glass door in Building E-4460 to separate command wing from utility area.	
Aberdeen	X022078709	87	199,149		Renovation of Building E-4460 into office space.	
Aberdeen	X022078710	87	314,780		Renovation of Building E-4460 into office space.	
Aberdeen	MIPR1499	89	5,282		Add five fans to Building E-4460 renovation; total renovation to cost \$671,630.	
Aberdeen	468T00600148K0	88	1,851		Renovation of Building E-4460 for USATHAMA.	

QUESTIONABLE AND INELIGIBLE PROJECTS (Continued)

<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>	<u>Basis for Questioned and Ineligible Costs</u>
Aberdeen	MIPR3399	89		\$ 4,829	Asbestos removal from Building E-4480.	The removal of this asbestos is considered ineligible for DERP funding under DASD(E) guidance. The guidance considers ineligible "the costs of asbestos surveys, containment, removal or disposal, except where incidental to DERP response action."
Aberdeen	487T01030348KO	89		\$45,564	Construct parking lot adjacent to Building E-4460.	The Army's interpretation that parking lots for USATHAMA personnel and visitors were "management expenses" was contrary to DASD(E)'s intent. DASD(E) concurred with our opinion.
Aberdeen	488T00410148KO	88		10,115	Construct parking lot adjacent to front entrance of Building E-4460.	
Aberdeen	486D02270348KO	86		27,619	Construct parking lot for Building E-4585 (35 spaces) to accommodate renovations.	
Aberdeen	488T00750648KO	88		\$38,402	Landscaping around Building E-4460; shrubbery.	Building exterior and grounds maintenance are normal base operation expenses and should be funded as such. The allocation of DERP funds through the O & M account does not make all activities fundable by that appropriation eligible for DERP. As stated in the enacting legislation, "Funds transferred under subsection (b) may only be obligated or expended from the account or fund to which transferred in order to carry out the functions of the Secretary under this chapter...."
Aberdeen	488T00450248KO	88		19,146	Painting exterior of Building E-4460.	
Aberdeen	MIPR3819	88		3,000	Landscaping, planting, and maintenance around Building E-4460.	

QUESTIONABLE AND INELIGIBLE PROJECTS (Continued)

<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>	<u>Basis for Questioned and Ineligible Costs</u>
Aberdeen	487T00400248K0	87	\$ 4,491		For Directorate of Engineering and Housing Support for Job Order Request #N372 to regravell/ extend road.	Documentation did not associate this activity with a particular environmental clean-up project. Therefore, its eligibility for DERP was questionable.
Aberdeen	487D00080248K0	87	4,063		Regravell/extend road (X022078707).	
Rocky Mountain Arsenal	DAAA1588D0023	88	\$ 2,038,328		Identify, locate, and properly close abandoned wells to prevent their acting as contaminant conduits.	Documentation did not show a requirement to close the abandoned wells, but only a "concern that they could act as a conduit for contaminants."
Rocky Mountain Arsenal	DAAA1586D0015	88		\$413,985	Remove and dispose of or encapsulate friable asbestos where potential for human exposure exists.	The removal of this asbestos is ineligible for DERP funding under DASD(E) guidance. The guidance considers ineligible "the costs of asbestos surveys, containment, removal or disposal, except where incidental to DERP response action."
Rocky Mountain Arsenal	DAAA0588C0022 PO 5	89	\$ 111,525		Building renovations.	The Army considered these building renovation costs "management expenses" because they were for office space to house Rocky Mountain Program Manager personnel. This was contrary to the intent of the legislation and DASD(E) guidance. DASD(E) concurred with our opinion on renovations.
Rocky Mountain Arsenal	X0-75799901	89		\$ 45,959	Bald eagle study.	Documentation indicated that monies from a contract with local governments was to fund these activities. However, accounting documentation indicated that DERP funds were expended.
Rocky Mountain Arsenal	X0-77799901	89		75,500	Bald eagle study.	
Rocky Mountain Arsenal	X0-77277920E7	89		3,300	Printing of brochure, "Bald Eagles at Rocky Mountain Arsenal - A Success Story."	

QUESTIONABLE AND INELIGIBLE PROJECTS (Continued)

<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>	<u>Basis for Questioned and Ineligible Costs</u>
Rocky Mountain Arsenal	XO-75277920	89	\$ 67,000	\$ 67,000	Flea spraying to protect eagles' food source (prairie dogs) from plague.	Controlling an outbreak of sylvatic plague and protecting an endangered species are not DERP-eligible activities, and cannot be funded with monies appropriated for that purpose.
Rocky Mountain Arsenal	XO-75277952	89	\$ 54,000		Blanket purchase order labeled "Alterations" in accounting systems.	Documentation provided did not support electrical work, but was for oil, rock, asphalt, a heater, and LP gas for unstated purposes.
Rocky Mountain Arsenal	819RMA15FLO8-3	89	\$1,063,000		To replace base perimeter fence.	Declaring an installation inactive does not make the installation's base operating expenses DERP-eligible. It is our opinion and that of DASD(E) that these expenses should continue to be funded by the Component until all activities at the installation are completed.
Aberdeen-1/	MIPR2039	89	\$150,000		Construct new facility at Aberdeen to relocate Rocky Mountain personnel.	
Aberdeen-1/	MIPR2619	89	894,300		Design and estimating services to renovate Building E-4465.	

1/ Office of the Inspector General for Auditing Report No. 90-015, "Quick-Response Report on the Audit of the Defense Environmental Restoration Program," resolved all issues. No further action is necessary by the Army.

QUESTIONABLE AND INELIGIBLE PROJECTS (Continued)

U.S. Army Corps of Engineers Projects

<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>	<u>Basis for Questioned and Ineligible Costs</u>
Dutch Harbor	DACA8587C0039	89	\$ 47,566		Debris removal at former bachelor officers' quarters, cold storage building, and star anchor at Dutch Harbor.	No funds for building demolition and debris removal (BDR) were allocated by DASD(E) during this fiscal year; therefore, BDR was a questionable project at this time.
Port Heiden and Port Moller	DACA8589C0042	89		\$1,980,000	Asbestos and debris removal and disposal.	Asbestos containment and removal were not eligible for DERP funding under DASD(E) guidance. Therefore, they would remain ineligible for funding when tied to another ineligible project.
Fort Wainwright	DACA8588C0001	88	\$1,630,161		Building demolition and debris removal of a base power plant.	The U.S. Army Corps of Engineers used the FY 1987 guidance and funding allocation to former sites in determining eligibility and fundability of projects; however, this was an active site project and had not been eligible for funding since FY 1986.
Subtotal			<u>\$5,458,946</u>	<u>\$3,961,374</u>		
Total Army				<u>\$9,420,320</u>		

QUESTIONABLE AND INELIGIBLE PROJECTS (Continued)

Navy Projects

<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>	<u>Basis for Questioned and Ineligible Costs</u>
Moffett Field	N62474-89-RC-00569	89	\$ 34,900		Demolition and removal of Buildings 530 and 532.	Documentation did not support the contention that the buildings had to be removed in order to seal the abandoned wells.
Moffett Field	N62474-89-PT-00008	89	758		Demolition and removal of Buildings 530 and 532.	
Moffett Field	N62474-85-5586 #03	87	\$396,706		Potential conduit investigation.	Documentation did not show whether the wells were within the plume or the flow of the plume.
Moffett Field	N62474-85-5586 #03	88	8,497		Potential conduit investigation.	
Moffett Field	N62474-85-5586 #03	89	17,578		Potential conduit investigation.	
Moffett Field	N62474-85-5586 #06	87	134,869		Potential conduit investigation.	
Moffett Field	N62474-88-D-5086-003	89	\$399,683		Abandoned well closures.	Documentation did not show why abandoned wells had to be sealed; the California Regional Water Quality Control Board had stated that wells had to be sealed or abandoned.
NWS Concord	N62474-86-LT-6004	86	\$290,000		Litigation support costs.	Documentation did not explain the litigation costs in detail. DASD(E) explained that DERP funds could be used for litigation costs of a technical nature, but not for general litigation costs.
NWS Concord	N62474-86-WR-00616	86	45,000		Litigation support costs.	
NWS Concord	N62474-87-WR-00C26	87	331,890		Litigation support costs.	

QUESTIONABLE AND INELIGIBLE PROJECTS (Continued)

<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>	<u>Basis for Questioned and Ineligible Costs</u>
NWS Concord	N62474-87-WR-00C19	87	\$ 60,000		Litigation support costs.	
NWS Concord	N62474-88-WR-00N17	88	253,000		Litigation support costs.	
NWS Concord	N62474-88-WR-00N18	88	25,000		Litigation support costs.	
NWS Concord	N62474-89-WR-00630	89	2,000		Litigation support costs.	
NWS Concord	N62474-89-WR-00635	89	120,000		Litigation support costs.	
Camp Pendleton	N62474-86-D-0976-02	88	\$ 23,738		Underground storage tank studies for leaking tanks that have been unused since 1987 and are being replaced.	Site engineer indicated that leaking tanks would be replaced. Subsequent documentation did not specify that leaking tanks would not be replaced. Also, documentation did not specify whether contamination occurred prior to March 1, 1986.
Pensacola	N62467-87-D-0254	89		\$440,442	Resource Conservation and Reclamation Act (RCRA) closure of surface impoundments (surge ponds) that were used by the industrial wastewater treatment plant.	Documentation indicated that funds were to be used for RCRA closure associated with current waste generation and construction of waste storage/treatment facilities. In FY 1986, the Naval Facilities Engineering Command determined that the replacement of the surge ponds with dual tanks "did not qualify for UMC (Unspecified Minor Construction) funding..." and requested "...resubmittal for Installation Restoration funding." This is contrary to DASD(E) Installation Restoration Guidance for 1988, which states, "RCRA applies to current practices dealing with hazardous waste management. It does not normally apply to disposal practices and spills which occurred prior to its enactment...."

QUESTIONABLE AND INELIGIBLE PROJECTS (Continued)

<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>	<u>Basis for Questioned and Ineligible Costs</u>
NADEP Norfolk	N62474-86-C-9796	86		\$1,815,959	Gross contamination removal and cross-contamination prevention at Buildings V-60/V-90.	The building was in use when a generator fire occurred, causing PCB contamination. This contamination was not from past hazardous waste; use of DERP funds was contrary to the intent of Congress as stated in DASD(E) guidance.
NADEP Norfolk	N62474-86-C-9796	87		3,872,157	Gross contamination removal and cross-contamination prevention at Buildings V-60/V-90.	
NADEP Norfolk	N62474-86-C-9202	87		513,863	Technical support for short-term remedial actions at Buildings V-60/V-90.	
NADEP Norfolk	N62474-87-C-8918	88		591,807	Development of environmental assessment data for Buildings V-60/V-90.	
NADEP Norfolk	N62474-87-C-8918	89		236,903	Development of environmental assessment data for Buildings V-60/V-90.	
NADEP Norfolk	N62474-88-B-8431	89	\$2,566,065		Demolition contract.	As a continuation of the above NADEP ineligible projects, this project is being questioned. However, NAVFAC Atlantic Division received permission from the Under Secretary of Defense (Acquisition) before proceeding with the project. This permission reversed the decisions of NAVFAC HQ and DASD(E), which had denied DERP funding for the project.

QUESTIONABLE AND INELIGIBLE PROJECTS (Continued)

<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>	<u>Basis for Questioned and Ineligible Costs</u>
NADEP Norfolk	N62474-3Q-B-8431	89	\$ 4,496		Demolition contract.	
Norfolk Naval Base	N62470-86-C-8272	86	\$ 114,622		Demolish various utilities at U.S. Naval Station, Norfolk.	Documentation did not explain whether the utilities were a source of contamination or were unsafe, or give any other indication of DERP eligibility.
Camp Lejeune	N62470-88-D-5825	89	\$ 66,063		Design a product recovery system for Hadnot Point Fuel Farm (underground storage tanks in use).	Documentation did not clearly explain how the product recovery system works. Therefore, DERP eligibility is questionable.
						No documentation was provided as to whether containment and/or cleanup of contamination was conducted while the tanks were active.
Subtotal			<u>\$4,894,865</u>	<u>\$7,471,131</u>		
Total Navy				<u>\$12,365,996</u>		

QUESTIONABLE AND INELIGIBLE PROJECTS (Continued)

Air Force Projects

<u>Installation</u>	<u>Project</u>	<u>FY</u>	<u>Questionable</u>	<u>Ineligible</u>	<u>Project Description</u>	<u>Basis for Questioned and Ineligible Costs</u>
Tinker AFB	88-03550	89	\$100,000		Plug Well 17, which is inactive, to prevent it from becoming a conduit for contaminants.	Documentation did not show a requirement to close the abandoned wells, but only a "concern that they could act as a conduit for contaminants."
Human Systems Division, Brooks AFB	F41800-87-C-0163	87 88 89	\$ 80,435 84,791 83,208		Lease/purchase agreement for a relocatable building on base to house DERP staff.	Although the Air Force stated that it does not intend to purchase these buildings, it is our opinion that the leases fall within the definition of capital leases as contained in GAO's "Manual for Guidance of Federal Agencies" (TS 2-24), and do not meet the criteria in DASD(E) guidance for eligible activities.
Mt. Mebo AFS	87-0138 88-0034	87 88	\$219,750 6,000		Study and demolition of former radar buildings on U.S. Forest Service land.	Under the DASD(E) allocation of funds, BORR projects were ineligible for funding during this period.
Wright-Patterson	EW-89-12	89	\$400,000		Plan to demolish structures and dispose of low-level radioactive material to allow use of site.	Air Force personnel informed us that this funding was for a Remedial Investigation/Feasibility Study; however, documentation identified the project as a Disposal and Demolition plan. This is not within the DASD(E) guidelines for DERP-eligible projects.

Subtotal \$748,454 \$225,750

Total Air Force \$ 974,204

Grand Total \$22,780,520

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STATISTICAL METHODS

We selected the sample in two stages, using cluster sampling for the first stage and stratification within clusters for the second stage. This statistically designed sample used the Military Departments as clusters; the Army, Navy, and Air Force became subuniverses from which data stratified by dollar size were selected. The selection of sample items was random within each of four strata by Military Department for FY's 1986 through 1989. Based on this selection methodology, we reviewed 57 percent of the universe dollars at the sampled locations selected (see Note 1). This accounted for 12 percent of the entire DERP universe of \$1.186 billion to be projected (see Notes 2 and 3).

The result shows that funds used for questionable and ineligible activities for all Military Departments, FY 1986 through FY 1989, amount to a projection of \$83,979,423 with 95 percent confidence that we are precise within \pm \$732,029, or \pm 1 percent of the dollar estimate. The approximate breakout by Military Department is:

Army	\$ 30.0 million
Navy	49.3
Air Force	4.6
	<u>\$ 83.9 million</u>

For the individual Military Department estimates, the precision is \pm 10 percent of the dollar estimate with 95 percent confidence.

Note 1: $57\% = \frac{\$140.1 \text{ million}}{\$246.3 \text{ million}}$

2: $12\% = \frac{\$ 140.1 \text{ million}}{\$ 1.186 \text{ billion}}$

3: Total DERP funding, FY 1984 - FY 1989	\$2.106 billion
Less: FY 1984 and FY 1985	.464
Audit Universe	<u>\$1.642 billion</u>
Less: Formerly used Defense sites, other hazardous waste and hazardous waste disposal	.282
	<u>\$1.360 billion</u>
Less: Rocky Mountain Arsenal	.174
Projected DERP Universe	<u>\$1.186 billion</u>

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**SUMMARY OF POTENTIAL MONETARY AND OTHER
BENEFITS RESULTING FROM AUDIT**

<u>Recommendation Reference</u>	<u>Description of Benefits</u>	<u>Amount and/or Type of Benefit</u>
A.1.	Compliance with laws and regulations: Better management of the program could be achieved if the Components operating the program received clearer guidance.	Nonmonetary
A.2.	Compliance with laws and regulations: More consistent interpretation of legislative intent.	Nonmonetary
B.1.	Compliance with laws and regulations: Establish a uniform reporting standard to allow more meaningful analysis of project performance.	Nonmonetary
B.2.	Internal control: Present management with a complete financial picture for making decisions concerning current operations and program plans.	Nonmonetary
B.3.	Internal control: Give management a true picture of actual project operation costs, allowing for more informed decisions.	Nonmonetary
B.4.	Internal control: Give program management greater control of funds and assure compliance with legislative intent.	Nonmonetary

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PRODUCTION AND
LOGISTICS

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-8000

January 25, 1991

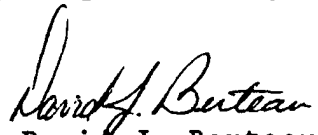
MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING

SUBJECT: Draft Report on the Audit of the Defense
Environmental Restoration Program (Project Number
9FH-5002)

The Draft Audit Report you sent to Deputy Assistant Secretary of Defense (Environment) (DASD(E)) on September 21, 1990, has been reviewed. The attached comments and changes suggested are provided for your consideration.

The DASD(E) received comments from Army, Navy, Air Force and DLA. These comments are combined, edited, and used as the basis for this reply. The formal Service input on this action may differ from those attached to this memorandum. However, those comments and changes represent the DASD(E) position.

We appreciate the opportunity to provide input for your final report.


David J. Berteau
Principal Deputy

Attachments

DASD(E) Comments on:

Inspector General, Department of Defense Draft Report on the
Audit of the Defense Environmental Restoration Program,
Project Number 9FH-5002.

Before responding to the specific recommendations contained
in the Draft Report, we want to highlight concerns covering
several of the discussions and recommendations.

Page 1

Page 1, line 22: The last line implies that installation
hazardous waste disposal costs are generally paid through DERP.
This statement should be modified to specify that only those
wastes emanating from an actual remedial action cleanup may be
disposed of with DERP funds.

Page 3, line 14: The \$16.8 million estimate should be changed to Page 2
\$11.7 million.

Page 8, line 5: It may be appropriate to define the Army's Page 5
Active sites management to include the U.S. Army Toxic and
Hazardous Materials Agency and Military Programs Directorate.

Page 9, line 5: Through meetings held with the Components, the Page 7
ODASD(E), the ODoD(C) and OIG, the use of DERA funds for
ineligible or questionable activities could not be substantiated.
However to preclude any misinterpretation in the future,
additional guidance which is specific and more precise has been
developed. The overall concern for adequate and timely DERP
Management Guidance has been previously noted and actions have
been taken by the ODASD(E) to ensure efficient and effective DERP
management processes. In addition to the DERP Directive and
Program Manual discussed in recommendation A1's response below,
the ODASD(E) is implementing a Defense Environmental Electronic
Bulletin Board to insure distribution of program guidance to all
the Components' command and operating levels.

Page 9, line 18: The ODASD(E) has been informed by the Navy that Page 7
the \$1.1 million litigation cost occurred at the Naval Weapons
Station Concord site, where under CERCLA and NCP, there is a
potential to recover \$12-\$13 million from private parties that
contaminated Navy land. This amount should pay for the required
cleanup. All of the litigation costs were in direct support of
this law suit. Reference the Federal Acquisition Regulation
(subpart 42.7) which addresses overhead costs.

The remainder of this reply addresses the body of the report
and the specific recommended actions.

Page 11, Recommendation A1.

Page 7

Provide specific and timely policies and guidance defining activities that are eligible or ineligible for Defense Environmental Restoration Program funding, including definitions of terminology.

We concur. The DASD(E) is preparing a DoD Directive that will include a section to implement, clarify and supplement Public Law and Executive Orders concerning the management of the DERP. A working draft is now being informally coordinated with the Components and the final draft copy should be out for official coordination by 4th quarter, FY 1991. DASD(E) is also preparing a Program Manual for the DERP that will complement the existing service manuals which are intended for guidance at the installation level. This manual will be in a final form by 4th quarter, FY 1991. Both the Directive and Program Manual will detail specific policy and guidance to enable the services to determine the eligibility of their projects for DERP funds.

If the services still have a question concerning a project not specifically covered in this instruction, the DASD(E) will consider that specific project and then issue a timely decision of approval or rejection (See the recommendation for b. below). At the same time, the DASD(E) will also send a copy of the memo to the services and DLA describing the details of the specific project and the justification for the decision. This will alert the components if they are planning a similar project.

Page 11, Recommendation A2.

Page 7

Approve projects in areas not specifically addressed by the Defense Environmental Restoration Program guidance and where eligibility cannot be determined at the Component level using guidance provided by the Deputy Assistant Secretary of Defense (Environment).

We partially concur. The IG states, (Part II, A., DISCUSSION OF RESULTS, Background, paragraph 2) "The DERP allows each Component to accomplish the objectives of DERP in the way that best suites its organizational structure." This indicates that there is some flexibility in the DERP to consider unique or one-of-a-kind project. It also reiterates an important concept of the DERP, that each component manages its DERA funds in accordance with its organizational structure. Therefore, those same components should retain the authority to approve (or deny) a project that is not specifically addressed by the DASD(E) Directive or Program Manual. It is conceivable that some specific policies not addressed by DASD(E) will be addressed in the Components IR Manual. In cases where the components cannot (or choose not to) resolve the approval of a non-specified project, the DASD(E) should make the decision. The bottom line is that if a project is questionable, or not specifically covered by the DASD(E) or components' policy, written approval must be obtained from the component Executive Program Manager or the DASD(E) before any funds are obligated.

Page 18, Recommendation B1.

Establish a uniform definition for the term "site" in coordination with the Environmental Protection Agency or define "site" for DoD accounting purposes, and establish policy for DoD Components to report costs by site.

We concur. The problem with the term "site" is that there are multiple definitions. The term "site" is mentioned, but not defined in CERCLA, (P.L. 96-510 and P.L. 99-499). EPA uses the term site and facility interchangeably. As a result, the EPA may use the term to describe many different activities or areas. In CERCLA, the term facility is described as follows:

The term "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

The EPA, in applying their Hazard Ranking System (HRS) to an installation may consider multiple areas as a contiguous site. If they all contain similar hazardous substances, threaten the same aquifer and target population, etc., and the HRS exceeds 28.5, the areas may be combined and entire the installation then be referred to as one NPL "site". This of course would be a totally unworkable definition for tracking cleanup progress at multiple areas.

The Defense Environmental Restoration Program Management Information System (DERPMIS) has developed and implemented site name conventions for DoD based on defined types of activity. These definitions were recently distributed to DoD Components in the DERPMIS User's Manual (November, 1990). This should aid in accounting by site for DoD Components. Costs in DERPMIS have always been required by site. However, DERPMIS, as presently set up, was not designed to contain budget development and execution data. However, we are in the process of modifying DERPMIS (note our responses to Recommendations numbered B3 and B4, below).

Page 18, Recommendation B2.

Include the formerly used defense sites controlled by the U.S. Army Corps of Engineers in the Defense Environmental Restoration Program Management Information System.

We concur. The DASD(E) recognized the problem and in FY90 directed the addition of the Formerly Used Sites Defense Program as a fifth service, which involved interpretation of COE-supplied Formerly Used Defense Sites (FUDS) data and entry into DERP

format. This includes former sites eligible for remedial activity under the reporting jurisdiction of the DERPMIS program.

Page 18, Recommendation B3.

Page 11

Establish procedures to reconcile and adjust amounts entered into the Defense Environmental Restoration Program Management Information System with actual obligations and expenditures.

We concur. Enhancements are currently being made to the DERPMIS which include at a minimum the interface between the DERPMIS and the automated Defense Environmental Restoration Budget System (DERBS). The DERBS contains financial data used to formulate the budget for the Environmental Restoration, Defense (ER,D) appropriation. The financial data are updated for each DoD budget cycle. The DERBS is being expanded to include an execution tracking capability that will essentially provide an audit function and track the amounts budgeted, funded, obligated, and expended. Through the interface, select financial data in DERBS will be transferred to the DERPMIS. The estimated date for implementation is September, 1991.

Guidance is provided by the DASD(E) and the DoD Comptroller for each budget submission. The DoD Budget Guidance Manual (7110.1-M), OMB Circular A-11, and DASD(E) Management Guidance Document, support the budget process. The DoD Accounting Manual (DoD 7220.9-M) which implements the OMB Accounting Manual provides reporting procedures, fiscal reports, etc.

Page 18, Recommendation B4.

Page 11

Institute procedures and controls to ensure that funds from the Defense Environmental Restoration Program are used only for environmental restoration purposes and are not lost to further use by the Program. This should be coordinated with the Comptroller of the Department of Defense and the General Counsel of the Department of Defense to establish accounting procedures and practices necessary to control funds.

We concur. The Reprogramming Actions (DD Form 1415-3) which transfer funds from the Environmental Restoration, Defense (ER,D) Appropriation into other DoD Appropriation Accounts specifically cites Title 10 U.S.C. 2703 (c) "funds transferred from the ER,D transfer appropriation to other Defense appropriations may only be obligated or expended for environmental restoration functions". Other than intended use of these funds would be a violation of the law.

Currently the DoD Components have established program elements and/or cost account codes to track the accounting data for environmental resources. At a minimum, the commitments and obligations are reviewed quarterly by the ODASD(E), OASA(IL&E), OASN(I&E), OASAF(SAF/MIQ), DLA-W, ODAEN-ZCZ-A, and ODOD(C) Program/Budget. To preclude monies expiring, unobligated

balances are transferred back to DERA prior to the end of the fiscal year and used to fund other environmental requirements. In accordance with the FY 1991 Defense Appropriation Act, DoD funds that are expired will be available for obligation adjustments for not more than five years following their period of obligational availability.

Fiscal Guidance and Management Guidance that govern DERA resources are updated as required. To further improve the tracking of environmental resources, a standardized program element and/or costs account structure to track all environmental costs is being developed within DoD. Formulation as well as execution data will be included.

Additional Component Comments.

The Military Components and DLA have carefully studied the Draft Audit Report. They are providing their specific comments directly to your office. However, the Navy and Air Force have taken exception to most of the individual project reviews listed in Appendix B and C of subject report. Therefore we are transmitting those concerns as attachments 1 and 2 respectively.

TAB A1

NAS MOFFETT FIELD

Project Numbers:

N62474-89-RC-00569	(FY 89)	\$34,900	Demolition and Removal of Buildings 530 & 532
N62474-89-PT-00008	(FY 89)	\$ 758	Demolition and Removal of Buildings 530 & 532

Comment on Draft Report: Nonconcurrency

Basis For Inclusion in the DERA Program:

1. Buildings 530 and 532 were pumphouses above abandoned wells 14M-1 and 14M-2, respectively. Contamination of the shallow groundwater aquifer with chlorinated solvents was documented in the Initial Assessment Study (April, 1984). The deeper aquifer is used by over 270,000 people for drinking water. The Regional Water Quality Control Board issued an order to NAS Moffett Field in 1987 which established an expedited schedule for assessing and sealing the wells. While knowledge of the contaminant plumes from sources on NAS Moffett Field is limited, it is known that the wells are in the flowpath of the contaminant plume from an off-base (non-Navy) National Priority List (NPL) site. The degree of threat from contamination on Navy property will not be known until additional studies are completed, but the potential threat was adequate to justify inclusion of NAS Moffett Field on the NPL in August 1987.
2. In the opinion of the Navy engineers and regulatory officials of the state and EPA, it was necessary to perform studies of old well shafts which could provide pathways (conduits) for rapid movement of surface contamination into the deeper groundwater aquifer. Through the potential conduit studies, the ultimate decision by Navy engineers was to protect the deep aquifer by injecting grout into the wells to preclude migration of contaminants via the wells. Access to the well shafts by the equipment required for investigation and sealing was inhibited by the small buildings. While adequate access for the work might have been obtained by removal of only a portion of each pumphouse, the Navy engineers deemed it to be more cost effective to raze the structures entirely.
3. The "building demolition and removal" (razing the pumphouses) was a necessary part of the response action to the threat posed to deep groundwater supplies. We concur that documentation does not indicate that the buildings had to be removed to access the wells. We are unaware of any requirement at the time these actions were taken, in policy, regulation, or guidance, to generate such documentation. The 1990 revisions to the National Contingency Plan indicate that an Engineering Evaluation, Cost Analysis, and Action Memorandum are to be developed prior to such removal actions. However, those regulatory requirements did not exist at the time of the contested actions. The Deputy Assistant Secretary of Defense (Environment) (DASD(E)) forwarded

TAB A1
(cont'd)

NAS MOFFETT FIELD

Project Numbers:

N62474-89-RC-00569	(FY 89)	\$34,900	Demolition and Removal of Buildings 530 & 532
N62474-89-PT-00008	(FY 89)	\$758	Demolition and Removal of Buildings 530 & 532

3. (cont'd) management guidance for the FY 1989 DERP on December 9, 1989 which stated that "DOD components are authorized maximum flexibility in executing their programs subject to the legislative requirements of the SARA, the intent of Congress as expressed in the various Committee reports, DOD program management and budget requirements, and policies established by my office". Under priority A, DASD(E) included "...removal actions upon discovery of an imminent threat due to hazardous or toxic substances...". The Navy engineers that initiated the contested contract actions determined the work to be necessary and proper to protect the potable aquifer. The removal actions were taken only to expedite access to the wellheads and not because of any structural defect or other lack of safety intrinsic to the buildings themselves. In summary, the contested actions were in conformance with general program policy and all relevant DASD(E) guidance existent at the time.

TAB A2

NAS MOFFETT FIELD

Project Numbers:

N62474-85-5586 #03	(FY 87)	\$396,706	Potential Conduit Investigation
N62474-85-5586 #06	(FY 87)	\$134,869	Potential Conduit Investigation
N62474-85-5586 #03	(FY 88)	\$8,497	Potential Conduit Investigation
N62474-85-5586 #03	(FY 89)	\$17,578	Potential Conduit Investigation

Comment on Draft Report: Nonconcurrency

Basis For Inclusion in the DERA Program:

1. These projects are response actions in which each subsequent action was dependent upon findings of the preceeding study. Due to the hydrogeological setting, these studies were required to investigate and otherwise respond to existing and potential groundwater contamination with toxic substances at NAS Moffett Field.
2. The old well shafts were identified in the Initial Assessment Study (dated April 1984). The shafts could serve as possible pathways (conduits) for rapid movement of contamination into the deeper groundwater aquifer used for drinking water by more than 270,000 people. To investigate that possibility, it was necessary to access the well shafts and perform inspections of the casings. The ultimate decision was to protect the deeper aquifer by injecting grout into the wells to preclude migration of contaminants via the wells.
3. In 1987, the California Regional Water Quality Control Board (RWQCB) issued an order to NAS Moffett which established an expedited schedule for assessing and sealing the wells. After NAS Moffett Field was placed on the National Priority List (in August 1987) by the Environmental Protection Agency (EPA), the same schedule became part of the Federal Facilities Agreement signed by the Navy, the EPA, and the State.
4. The Deputy Assistant Secretary of Defense (Environment) (DASD(E)) forwarded management guidance for the FY 1987 Defense Environmental Restoration Program (DERP) on 12 November 1986. It established priorities within the Installation Restoration program, with Priority A delineated as "Sites recommended for or included on the National Priority List (NPL) and other sites which pose an imminent and substantial danger to people or the environment".
5. The DASD(E) forwarded management guidance for the FY 1988 DERP on 14 December 1987. It established priorities within the Installation Restoration program, with Priority A delineated as "Includes removal actions upon

TAB A2
(cont'd)

NAS MOFFETT FIELD

Project Numbers:

N62474-85-5586 #03	(FY 87)	\$396,706	Potential Conduit Investigation
N62474-85-5586 #06	(FY 87)	\$134,869	Potential Conduit Investigation
N62474-85-5586 #03	(FY 88)	\$8,497	Potential Conduit Investigation
N62474-85-5586 #03	(FY 89)	\$17,578	Potential Conduit Investigation

5. (cont'd) discovery of an imminent threat due to hazardous or toxic substances." Under "Activities Eligible for DERA, Installation Restoration Program" (first item), it listed: "Investigations to identify, confirm and determine the risk to human health and the environment; feasibility studies; remedial action plans and designs; and removal or remedial actions."

6. The DASD(E) guidance for FY 1989 was forwarded on 9 December 1988. Within the enclosure to the FY 1989 guidance, under "Activities Eligible for DERP", "Installation Restoration Program", the first item is "Investigations to identify, confirm and determine the risk to human health and the environment; feasibility studies; remedial action plans and designs; and removal or remedial actions." Under the Installation Restoration Program, the guidance from DASD(E) included, under "Priority A", "...removal actions upon discovery of an imminent threat due to hazardous or toxic substances...". The investigation of the wells was undertaken due to groundwater contamination deemed by the California RWQCB and the EPA to pose an imminent and substantial threat to human health and the environment. The wells were within the plume of contamination from an adjacent non-Navy National Priority List site (known as the "MEW Site") and possibly within one or more plumes from operations of the Navy. Investigation of the wells was deemed an appropriate and necessary response action by the regulatory agencies, as indicated by the Order from the California RWQCB and by the language in the Federal Facility Agreement. Sealing the wells limits potential for contamination of the deep aquifer and thereby serves to remove a pathway for exposure of humans to the contaminants.

7. We concur that documentation does not directly indicate that the wells were within the plume from Navy sources. However, our engineers have determined the wells to be within the flowpath of the plume from the "MEW site". There is also reason to believe that the Navy plumes threaten the wells. Contamination of the shallow aquifer from Navy sources was documented in the Initial Assessment Study dated April, 1984. Although the flowpath of that contamination is not yet known, the threat was great enough to justify inclusion of NAS Moffett Field on the National Priority List in August of 1987. We are unaware of any requirement in existence at the time these actions were taken, in regulation, policy, or guidance, to generate documentation of the type suggested by the audit. The 1990 revisions to the

TAB A2
(cont'd)

NAS MOFFETT FIELD

Project Numbers:

N62474-85-5586 #03	(FY 87)	\$396,706	Potential Conduit Investigation
N62474-85-5586 #06	(FY 87)	\$134,869	Potential Conduit Investigation
N62474-85-5586 #03	(FY 88)	\$8,497	Potential Conduit Investigation
N62474-85-5586 #03	(FY 89)	\$17,578	Potential Conduit Investigation

7. (cont'd) National Contingency Plan indicate that an Engineering Evaluation, Cost Analysis, and Action Memorandum are to be developed prior to such removal actions. However, those regulatory requirements did not exist at the time of the contested actions. The investigation and sealing of the wells qualify as response actions to an imminent threat under the National Contingency Plan. As discussed above, the work qualified as "IR Priority A". The removal actions were in accordance with relevant policy and DERP management guidance from DASD(E).

TAB A3

NAS MOFFETT FIELD

Project Numbers:

N62474-88-D-5086-003

(FY 89)

\$399,683

Abandoned Well Closures

Comment on Draft Report: Nonconcurrence

Basis for Inclusion in the DERA Program:

1. This project was the culmination of a series of efforts required to respond to existing and potential groundwater contamination with toxic substances at NAS Moffett Field. The known contamination is limited to the shallow aquifer, while the deeper aquifer is used for potable water. The efforts were intended to preclude or minimize migration of contaminants to the deeper aquifer and potential direct human exposure.

2. The old well shafts were identified in the Initial Assessment Study (dated April, 1984). The shafts could act as pathways (conduits) for rapid movement of contamination into the deeper groundwater aquifer used for drinking water by more than 270,000 people. After a series of studies, the ultimate decision was to protect the deeper aquifer by injecting grout into the wells to preclude migration of contaminants via the wells.

3. In 1987, the California Regional Water Quality Control Board (RWQCB) issued an order to NAS Moffett Field which established an expedited schedule for assessing and sealing the wells. After NAS Moffett Field was placed on the National Priority List (in August 1987) by the Environmental Protection Agency (EPA), the same schedule became part of the Federal Facilities Agreement signed by the Navy, the EPA, and the State. These actions by the regulatory agencies required the Navy to make plans to fund the required actions, although the guidance on funding was being provided on an annual basis. The DASD(E) provided guidance for FY 1989 by memorandum dated 9 December 1988. In the guidance, under "Activities Eligible for DERP", "Installation Restoration Program", the first item is "Investigations to identify, confirm and determine the risk to human health and the environment; feasibility studies; remedial action plans and designs; and removal or remedial actions". Under the Installation Restoration Program, the guidance from DASD(E) included, under priority A, "...removal actions upon discovery of an imminent threat due to hazardous or toxic substances...".

4. The sealing of the wells was undertaken due to groundwater contamination deemed by the State and the EPA to pose an imminent and substantial threat to human health and the environment. The wells were within the plume of

TAB A3
(cont'd)

NAS MOFFETT FIELD

Project Numbers:

N62474-88-D-5086-003

(FY 89) \$399,683

Abandoned Well Closures

4. (cont'd) contamination from the non-Navy National Priority List site (known as the "MEW Site") and possibly within plumes from Navy sources. Response actions were required to minimize the threat. Investigation and sealing of the wells were deemed appropriate and necessary response actions by the regulatory agencies, as indicated by the Order from the California RWQCB and by the language in the Federal Facility Agreement. Sealing the wells limits potential for contamination of the deep aquifer and thereby serves to remove a pathway for exposure of humans to the contaminants.

5. We concur that documentation does not indicate that the wells had to be sealed. We do not concur with the IG's contention that the California RWQCB order allowed the wells to be "abandoned" in the traditional meaning of the word. While the Navy was not using the wells during the potential conduit investigation studies, the condition of the wells (not properly closed) was unacceptable to the state agency and the Environmental Protection Agency, as discussed in paragraph four. The choice faced by the Navy engineers was between either repairing and maintaining the wells or sealing the wells. Engineering judgement dictated that the wells should be sealed to mitigate the threat of contamination of the potable water aquifer from known and potential sources. We have identified no requirement, in regulation, policy, or guidance, which required us to generate documentation in the contract files or elsewhere as to the selection of a particular removal action alternative at the time of these actions. The 1990 revisions to the National Contingency Plan indicate that an Engineering Evaluation, Cost Analysis, and Action Memorandum are to be developed prior to such removal actions. However, those regulatory requirements did not exist at the time of the contested actions. The investigation and sealing of the wells qualifies as a response action to an imminent threat under the National Contingency Plan. As discussed in paragraphs 4 and 5 above, the work qualified as "IR Priority A". The removal actions were in accordance with relevant policy and DERP management guidance from DASD(E).

TAB B

CONCORD

Project Numbers:

N62474-86-LT-00004	(FY 86)	\$290,000	Litigation Support Costs
N62474-86-WR-00616	(FY 86)	\$45,000	Litigation Support Costs
N62474-87-WR-00C26	(FY 87)	\$331,890	Litigation Support Costs
N62474-87-WR-00C19	(FY 87)	\$60,000	Litigation Support Costs
N62474-88-WR-00N18	(FY 88)	\$25,000	Litigation Support Costs
N62474-89-LT-00635	(FY 89)	\$120,000	Litigation Support Costs

Comment on Draft Report: Nonconcurrency

Basis for Inclusion in the DERA Program:

1. N62474-86-LT-6004: The contract number cited in the audit report is apparently a combination of the document number assigned by the Department of Justice (DOJ) and the contract number used by Western Division, Naval Facilities Engineering Command. This project provided automated litigation support services for litigation of a case to establish legal liabilities for remediation of groundwater contamination in the vicinity of Naval Weapons Station Concord, CA. Services were for document management, establishment of a document center, construction of a text deposition database, deposition abstracts, microfilming of case documents, and assistance with discovery. It also provided litigation support by paying travel/per diem expenses for a DOJ attorney to assist the Navy.
2. N62474-86-WR-00616: This project provided reimbursement for the Navy Office of General Counsel for its attorneys to travel from Washington, D.C. to San Francisco, California in connection with providing legal services in support of carrying out the Navy's response action on Parcels 571-576, 579D, and 581 on the Naval Weapons Station Concord, California, in compliance with CERCLA and the NCP and in prosecution of the two consolidated actions to recover the Navy's cost of response.
3. N62474-87-WR-00C26: This project provided for automated litigation support, litigation assistance (by paying the costs of a GS-12 attorney) and reimbursement for consultation services with technical experts. These expenses were incurred in litigation of a cost recovery action for the Navy's response action on Parcels 571-576, 579D, and 581 of NWS Concord in compliance with CERCLA and the NCP concerning remediation of groundwater contamination.
4. N62474-87-WR-00C19: This project provided reimbursement for the Navy Office of General Counsel for its attorneys to travel from Washington, D.C. to San Francisco, California in connection with providing legal services in support of carrying out the Navy's response action on Parcels 571-576, 579D, and 581 on the Naval Weapons Station Concord, California, in compliance with CERCLA and the NCP and in prosecution of two consolidated actions to recover the Navy's cost of response.

TAB B
(cont'd)

NWS CONCORD

Project Numbers:

N62474-86-LT-00004	(FY 86)	\$290,000	Litigation Support Costs
N62474-86-WR-00616	(FY 86)	\$45,000	Litigation Support Costs
N62474-87-WR-00C26	(FY 87)	\$331,890	Litigation Support Costs
N62474-87-WR-00C19	(FY 87)	\$60,000	Litigation Support Costs
N62474-88-WR-00N18	(FY 88)	\$25,000	Litigation Support Costs
N62474-89-LT-00635	(FY 89)	\$120,000	Litigation Support Costs

5. N62474-88-WR-00N18: This project provided reimbursement for the Navy Office of General Counsel for its attorneys to travel from Washington, D.C. to San Francisco, California in connection with providing legal services in support of carrying out the Navy's response action on Parcels 571-576, 579D, and 581 on the Naval Weapons Station Concord, California, in compliance with CERCLA and the NCP and in prosecution of the two consolidated actions to recover the Navy's cost of response. In addition, the Navy Office of General Counsel was reimbursed for the costs it incurred in relocating one of its attorneys, J. Martin Robertson, from Washington, D.C. to San Francisco, California to work on the above case.

6. N62474-89-LT-00635: This project provided reimbursement to the Department of Justice for the costs it incurred in connection with providing litigation support services for the prosecution of two consolidated actions to recover the Navy's response action on Parcels 571-576, 579D, and 581 on the Naval Weapons Station Concord, California, in compliance with CERCLA and the NCP. The litigation support for which DOJ was reimbursed included the costs of providing assistance in discovery, management of documents, abstracting of depositions, and court reporting in connection with prosecuting the above cases.

7. The litigation concerns establishment of multi-party liability for groundwater contamination on and off Navy property in the vicinity of NWS Concord, CA. The determination/settlement of relative levels of responsibility for response actions both on and off NWS Concord is a prerequisite to a multi-party cooperative agreement with the potentially responsible parties. NWS Concord was proposed for inclusion on the National Priority List in June 1988 due to groundwater contamination.

8. The Deputy Assistant Secretary of Defense (Acquisition and Logistics) (DASD(A&L)) memorandum providing management guidance for the FY 1986 DERP, dated February 7, 1986, established priorities within the Installation Restoration (IR) program, with Priority A under IR delineated as "Site recommended for or included on the National Priority List (NPL) and other sites which pose an imminent and substantial danger to people or the environment." The guidance provided a list of "Activities Eligible for DERA"

TAB B
(cont'd)

NWS CONCORD

Project Numbers:

N62474-86-LT-00004	(FY 86)	\$290,000	Litigation Support Costs
N62474-86-WR-00616	(FY 86)	\$45,000	Litigation Support Costs
N62474-87-WR-00C26	(FY 87)	\$331,890	Litigation Support Costs
N62474-87-WR-00C19	(FY 87)	\$60,000	Litigation Support Costs
N62474-88-WR-00N18	(FY 88)	\$25,000	Litigation Support Costs
N62474-89-LT-00635	(FY 89)	\$120,000	Litigation Support Costs

8. (cont'd) which included, under "Installation Restoration Program", "expenses associated with cooperative multi-party cleanup plans and activities" and "Acquisition of legal and/or technical support for negotiations, settlement or litigation associated with the Installation Restoration Program".

9. The FY 1987, 1988, 1989, and the 1990-91 guidance memoranda list "Expenses associated with cooperative multi-party cleanup plans and activities" and "Management expenses associated with the Installation Restoration Program, including civilian salaries" as activities eligible for DERA. None of the guides indicate that litigation expenses are ineligible for DERA.

10. Litigation support, including civilian employee salaries and expert consultation services, are necessary expenses for management of the IR program in that failure to obtain fair and proper contribution from other responsible parties will result in the total remedial action cost being paid by the DERA and/or Navy. Without this action, the joint and several liability language of CERCLA/SARA would result in use of DERA and/or Navy funds to pay costs for which the Navy has no responsibility.

11. The litigation was begun in accordance with program guidance existing at the time. The funding guidance from DASD(A&L) specifically allowed for these actions at the time the case was undertaken. The later DASD guidance contains similar (though less direct) language and in no event disqualifies such efforts from DERA eligibility. As a requirement for program management and as part of the effort to obtain multi-party cooperative agreements for response actions, this project was in accordance with relevant guidance and policy from DASD. Although we have received no guidance from DASD supporting the purported basis for questioning these costs, the litigation is highly technical in nature as indicated by the documented procurement of specialists to provide expert testimony on several occasions (see the documentation previously provided for N62474-86-LT-00005, now deleted from the audit, which provided reimbursement for consultation services with technical experts in litigation of this same case. See also the documentation for project N62474-87-WR-00C26 referenced in paragraph 3). All of the actions at this installation cited by the IG concern a single continuous litigation effort.

TAB C

MCLB CAMP PENDLETON

Project Numbers:

N62474-86-D-0976-02

(FY 88) \$23,738

**Underground Storage Tank
Studies for Leaking
Tanks Unused Since 1987
and Are Being Replaced**

Comment on Draft Report: Partial concurrence

Basis for Inclusion in the DERA Program:

1. The purpose of the contract as stated in the contract documentation (Scope of Work dated 25 August 1988 and Revised 22 September 1988) was for preparation of a General Work Plan in response to cleanup and abatement order No. 88-55 issued by the California Regional Water Quality Control Board (RWQCB) on 31 March 1988.

2. The FY-88 DERA guidance memorandum provided by the Office of the Deputy Assistant Secretary of Defense (Environment) (ODASD(E)) on 14 December 1987 listed as eligible for Defense Environmental Restoration Account (DERA) funding "cleanup of contamination believed to be harming human health and the environment resulting from tank leaks which occurred prior to March 1, 1986, unless such cleanup is incidental to tank replacement." The workplan dated December 1988 was generated in response to the RWQCB order and indicates seventeen tanks or other release sources were indicated in a 1986 report by Westec Services, Inc. The 1986 Westec study documents that contamination existed at that time. The main subjects of the workplans were tanks which stored heating fuel for a Marine Corps barracks. The barracks are reported to have been abandoned before 1986, so it is reasonable to believe that the contamination in that area occurred prior to 1986. The barracks are currently under a contract for demolition, so there is no likelihood that the fuel tanks for those facilities will be replaced. However, the workplans generated by the contested action are of general application to underground storage tanks at three installations; some tanks on those installations may be replaced by separate actions.

3. Since contamination was documented in the Westec report dated 1986, the tanks are believed to have leaked prior to 1 March 1986. Nonetheless, there is some reasonable question as to whether all tanks which will be addressed by the generalized workplans were in fact leaking prior to 1 March 1986. While we believe that the use of DERA funds was necessary (i.e. the only source of funds available for the work at the time) to obtain the required workplans to respond to the DERA-eligible tanks, cost effective use of the contract product has probably resulted in use on ineligible tanks also.

TAB D

NAS PENSACOLA

Project Number:

N62467-87-D-0254

(FY 89) \$440,442

**RCRA Closure of
Industrial Wastewater
Treatment Plant Surface
Impoundments**

Comment on Draft Report: Nonconcurrency

Basis for Inclusion in the DERA Program:

1. This project was to fund the Interim Removal/Corrective Action (IR/CA) of a surge pond surface impoundment at the Industrial Wastewater Treatment Plant (IWTP) at NAS PENSACOLA. MCON funds were used for the construction of replacement tanks.

2. The clean up of the IWTP surge pond met the requirements of the DASD(E) guidance for a CERCLA IR/CA action eligible for DERA funding. The Navy constructed these facilities in 1971. The contamination from the surface impoundments probably started soon after installation and therefore was viewed as a past contamination. The Navy planned to remove the surge pond from service and clean up the volatile organic compounds which had contaminated soil and groundwater in the vicinity. The only reason the surge pond stayed in operation was that it was not possible to operate the IWTP without the pond and it took years to program the Military Construction project and build the tanks which now substitute for the pond. The state and EPA agreed with the continued use in the interim. Groundwater remediation was ongoing at the site four to five years prior to this IR/CA for contamination that existed prior to development of RCRA standards and interpretations which made the pond obsolete. Therefore, the IR/CA was not associated with removal of contamination from current waste management practices. The action was consistent with EPA's policy to control the source of contamination through IR/CA prior to performing the remedial action at a site and was considered a "response" under CERCLA.

3. The expenditure of \$440,442 of FY 1989 DERA funds for IR/CA of IWTP Surface Impoundments was an appropriate use of DERA-IR funds since the groundwater contamination from the surface impoundments began before 1980. The Initial Assessment Study, dated June 1983, indicates on page 5-61 that studies of groundwater contamination from the Surge Pond took place as early as 1981 and 1982. The IWTP was an identified IR site and the cleanup of the surface impoundments met the definition of a response action under CERCLA/SARA.

TAB E

NADEP NORFOLK

Project Numbers:

N62474-86-C-9796	(FY 86)	\$1,815,959	Gross Contamination Removal & Cross Contamination Prevention At Bldg V-60/V-90
N62474-86-C-9796	(FY 87)	\$3,872,157	same as above
N62474-86-C-9202	(FY 88)	\$513,863	Technical Support for Short Term Remedial Actions At Bldg V-60/V-90
N62474-87-C-8918	(FY 88)	\$591,897	Development of Environmental Assessment Data For Bldg V-60/V-90
N62474-87-C-8918	(FY 89)	\$236,903	same as above
N62474-88-B-8431	(FY 89)	\$2,566,065	Demolition Contract
N62474-3Q-B-8431	(FY 89)	\$4,446	Demolition Contract

Comment on Draft Report: Nonconcurrency

Basis For Inclusion in the DERA Program:

1. The projects listed above were needed to cleanup and remove PCB, dioxin and furan contamination throughout NADEP Buildings V-60/V-90. This contamination resulted from soot and smoke from a PCB transformer fire on 26 April 1986 in V-60/V-90. Projects #27 & #28 were for demolition and removal of Buildings V-60/V-90.

2. On 7 Feb 1986, DoD forwarded guidance for activities which were eligible for FY 1986 DERA funding. This guidance stated that removal and remedial actions were eligible for DERA funding. The guidance specifically permitted the use of DERA funds for remediating PCB contaminated sites by citing PCB remediation projects at PWC Norfolk, NRTF Driver and PWC Guam as DERA eligible projects. The guidance did not prohibit the use of DERA funds for responding to releases which occurred in FY 86, except that cleanup of spills covered by SPCC regulation were not eligible. The Navy initiated the cleanup of the PCB contamination at NADEP Norfolk because it was consistent with the projects in the 1986 DoD guidance. DASD(E)'s FY 1987 guidance was essentially the same as the FY 86 guidance, but did not include a list of approved projects.

3. By letter dated 19 April 1988, Mr. Costello, Under Secretary of Defense (P&L), provided guidance to the Navy that "Your request to use Environmental Restoration, Defense (ER,D) funds to remove buildings V-60 and V-90 at NAS Norfolk, which are contaminated as a result of a PCB fire, is approved. The building removal is considered a continuation of a CERCLA response action and supplements previous cleanup action." Mr. Costello's letter provided concurrence and approval for using DERA for remediating the PCB contamination and demolishing Buildings V-60/V-90.

TAB F

NAVAL BASE NORFOLK

Project Number:

N62470-86-C-8272

(FY 86) \$114,622

**Demolish Various
Utilities At U.S. Naval
Station, Norfolk**

Comment on Draft Report: Nonconcurrence

Basis for Inclusion in the DERA Program:

1. This project was to fund demolition and removal of various abandoned facilities including: a concrete slab, electrical poles, transformers, lights and associated general conductors, partial demolition of building E-26, and incidental related work.

2. In the FY 1986, DoD authorized the funding of "Building Demolition and Debris Removal" for "The demolition of buildings or the removal of debris which constitute a safety hazard on active installations." The Navy received \$9.2M for "Building Demolition and Debris Removal" in FY 1986 and determined that the abandoned facilities constituted a safety hazard and thus a valid and proper use of the DERA funds.

3. The expenditure of \$114,622 of FY 1986 DERA funds for the Demolition of Various Utilities at U.S. Naval Station, Norfolk was an appropriate use of DERA-BD/DR funds. The Navy used these funds to demolish and remove abandoned facilities which were a safety hazard.

TAB G

MCB CAMP LEJEUNE

Project Number:

N62470-88-D-5825

(FY 89) \$66,063

Design a Product
Recovery System For
Hadnot Point Fuel Farm
(Underground Storage
Tanks in Use)

Comment on Draft Report: Nonconcurrency

Basis for Inclusion in the DERA Program:

1. This project was to design a system for the remediation of contaminated soil and groundwater at the Hadnot Point Fuel Farm. The fuel contamination resulted from past fuel leaks of underground facilities.

2. In the FY 1989 DERP management guidance, DASD(E) stated that activities eligible for DERP under the Installation Restoration Program included "Cleanup of contamination believed to be harming human health and the environment resulting from tank leaks which occurred prior to March 1, 1986, unless the cleanup is incidental to tank replacement. Components must have evidence that tanks were leaking prior to March 1, 1986."

3. The Initial Assessment Study of Marine Corps Base Lejeune North Carolina, dated 1983, identified the Hadnot Fuel Farm as a site which posed a potential threat to human health or the environment due to contamination from past hazardous waste operations. The report stated the Hadnot Fuel Farm Area, Site 22, experienced problems from fuel leaks including a 100-gallon diesel fuel release in 1981 and an estimated 20,000 to 30,000 gallon fuel release in 1979. This study provides the documentation that releases began at the Hadnot Fuel Farm Area prior to March 1, 1986.

**Air Force Comments
on
Draft DOD IG Report
Defense Environmental Restoration Program**

1. **Tinker AFB.** The DOD IG claimed the Air Force spent \$100K in FY 89 to prevent Well #17 from becoming a conduit for contaminants.

AF Response: Tinker AFB is a National Priorities List site primarily due to verified threat of groundwater contamination by trichloroethylene. The Garber Wellington aquifer which serves the Oklahoma City area is clearly at risk to the contamination from this facility. Installation officials noted the need to prevent Well #17 from enhancing the spread of contamination by taking an interim action to cap it. This is a standard engineering practice used by the Environmental Protection Agency at their sites under authority of CERCLA Section 105, National Contingency Plan. DASD(E)'s DERA and EPA's CERCLA guidance clearly requires the protection of public health and the prevention of threats to the community using good engineering judgement.

2. **Human Systems Division, Brooks AFB.** The DOD IG noted that its was "their opinion" that the leasing of a facility to house personnel was not DERA eligible.

AF Response: It was pointed out on several occasions that DASD(E) guidance provides for the appropriate management costs to support the DERP program. We believe the leasing of office space for personnel exclusively involved in DERP activities is a necessity to support operations. Further, an economical analysis was performed which substantiated the selection of this temporary space.

3. **Mt Hebo AFS.** The DOD IG thought the \$225.7K spent in FY 88 was for building demolition which was not supported for funding that year.

AF Response: This project was a remedial investigation and action which included the cleanup of polychlorinated biphenyl soils.

4. **Wright-Patterson AFB.** The DOD IG claimed the Air Force sent \$400K to the Army to develop a Demolition and Disposal Plan for determining the disposition of the abandoned nuclear reactor.

AF Response: The purpose of the investigation was to support the premise that the contained radioactive material in the reactor core had not leaked and had not resulted in a release to the environment. Since the reactor had been not been used since the early 1970s, the health and safety of personnel in or near the facility remains a serious concern. Further, the question of the integrity of the structure had to be assessed since its viability or deterioration could enhance the potential for a release under CERCLA, TSCA, Clean Air Act and Clean Water Act. The assessment of this facility as a D&D Plan was considered to fulfill the requirements of a preliminary assessment/site investigation under CERCLA and the NCP.

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Environment), Deputy for Environment, Safety and Occupational
Health, Washington, DC
U.S. Army Toxic and Hazardous Materials Agency, Edgewood, MD
Aberdeen Proving Ground, Aberdeen, MD
Rocky Mountain Arsenal, Aberdeen, MD

Department of the Navy

Naval Facilities Engineering Command, Alexandria, VA
Atlantic Engineering Field Division, Norfolk, VA
Engineering Field Division, San Francisco, CA
Engineering Field Division, Charleston, SC

Department of the Air Force

U.S. Air Force Directorate of Engineering and Services,
Bolling Air Force Base, Washington, DC
Air Force Systems Command, Andrews Air Force Base, MD
Air National Guard, Andrews Air Force Base, MD
Military Airlift Command, Andrews Air Force Base, MD
Air Force Reserve, Robins Air Force Base, GA
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Military Airlift Command, Scott Air Force Base, IL
Electronic Systems Division, Hanscom Air Force Base, MA
Tactical Air Command, Langley Air Force Base, VA
Air Logistics Center, Tinker Air Force Base, OK
Human Systems Division, Brooks Air Force Base, TX

Defense Logistics Agency

Defense Logistics Agency, Cameron Station, Alexandria, VA
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Missouri River Division, Omaha, NE
Omaha District Office, Omaha, NE
Kansas City District Office, Kansas City, MO
Ohio River Division, Cincinnati, OH
North Pacific Division, Anchorage, AK
Huntsville Division, Huntsville, AL

Non-Government Activities

Peer Consultants Inc., Rockville, MD

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